

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
(Northern Division)

UNITED STATES OF AMERICA,)
)
and the STATE OF MISSISSIPPI,)
)
Plaintiffs,)
)
v.)
)
THE CITY OF JACKSON, MISSISSIPPI,)
)
Defendant.)
_____)

Case No. 3:12-cv-790-HTW-LGI

**MEMORANDUM IN SUPPORT OF
JOINT MOTION FOR
RELIEF FROM MAY 24, 2023 ORDER**

I. Introduction

COME NOW, the Parties, United States of America and the State of Mississippi, acting through the Mississippi Commission on Environmental Quality and the Mississippi Department of Environmental Quality (“MDEQ”) (collectively “Plaintiffs”) and the Defendant, the City of Jackson, Mississippi, and hereby file this memorandum in support of their joint motion for relief from the Court’s May 24, 2023 Order. As explained below, the Parties have engaged in extensive efforts to address the City’s noncompliance with the Consent Decree, the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (“CWA”), and the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et seq.* (“MAWPCL”).¹ While progress has been made, the Parties have not yet reached an agreement or obtained necessary government approvals, and

¹ The Consent Decree was entered on March 1, 2013, and is still in effect. *See United States & State of Mississippi v. City of Jackson* (the “Sewer Case”), Civil No. 3:12-cv-790-HTW-LGI at Dkt. No. 10; *see also* Plaintiffs’ Report Regarding Status Conference and Order in Drinking Water case, Clean Water Act Case at Dkt. No. 31 at p. 3, fn. 1.

require relief from the Court's order to submit an agreement and proposed order on or before June 6, 2023. The Parties respectfully request that the Court relieve the Parties from this deadline and instead require the Parties to submit a joint status report or, if an agreement has been approved by the appropriate government officials with authority, a proposed agreement, on or before June 21, 2023.²

II. The May 24 Order

On May 24, 2023, the Court entered an order in the *United States v. City of Jackson*, Case No. 3:22-cv-00686-HTW-LGI (S.D. Miss.) (the "Drinking Water Case") (Dkt. No. 32), noting that it, on May 9, 2023, "instructed the parties . . . to develop a special Joint Order addressing the problems plaguing the City of Jackson, Mississippi's sewer system, modeled on the Drinking Water Interim Stipulated Order [Drinking Water Case]." The Order then required the parties "to continue their efforts to reach an agreement and submit a joint proposed Order [in the above-referenced Sewer Matter] to this Court on or before June 6, 2023."

III. Background Regarding Negotiations

The Parties have continued to engage in good faith negotiations since entry of the Order, have made substantial progress, and continue to work towards a written agreement that begins to address the serious sewer issues plaguing the City, as set out below.

The Plaintiffs have worked in good faith with the City and Interim Third-Party Manager of the Water System to reach a mutually acceptable agreement that will put the City on a path towards addressing its noncompliance with the CWA, MAWPCL, and the Consent Decree. Without going into the substance of what was discussed, as those discussions are subject to a

² Pursuant to Federal Rule of Civil Procedure 54(b), the Court has discretion to reconsider and amend any prior non-final order "for any reason it deems sufficient." *United States v. Renda*, 709 F.3d 472, 479 (5th Cir. 2013).

Confidentiality Order in this matter,³ the Plaintiffs can report that the day after the Order was entered, Thursday, May 25th, they met with the City and the City's outside attorney to discuss a proposed agreement. Thereafter, on each day during the week of Monday, May 29th, the Plaintiffs, the City, and the Interim Third-Party Manager in the Drinking Water Case as well as his counsel met virtually via Webex, for at least 2 hours on each occasion to engage in good faith negotiations. In addition, on Monday, June 5th, and Tuesday, June 6th, the Plaintiffs, the City, and the Drinking Water ITPM met in person in Jackson, with some counsel appearing virtually, to continue these discussions. Numerous others within and among the Department of Justice, Environmental Protection Agency, and MDEQ met many times in preparation for each day's negotiations. Because of the committed effort of the people involved, the Parties have made substantial progress towards an agreement.

IV. Argument

The Parties appreciate the urgency of the matter, considering the numerous Sanitary Sewer Overflows, the bypassing of appropriate treatment before sewage is discharged, and the other serious sewer problems in the City. The Parties have been working diligently to reach an agreement in this case. Any proposed agreement is subject to the review and approval of high-level government officials at the Department of Justice, the Environmental Protection Agency, and MDEQ. Similarly, the City must obtain City Council approval of any proposed agreement. The Parties have not yet reached a mutually acceptable agreement that can be submitted to the City Council and approved by necessary government officials. Finally, sharing any non-final

³ As the Court is aware, a Confidentiality Order has been entered in this matter and the Parties and the ITPM for the Water System are all bound to maintain the confidentiality of the substance of settlement discussions. *See* Clean Water Act Case, Dkt. No. 19, as amended by Dkt. No. 30; *see also* Plaintiffs' Report Regarding Status Conference and Order in Drinking Water Case, Clean Water Act Case, Dkt. No. 31 at 3-6.

draft or discussing non-final terms with any entity not subject to the Confidentiality Order would violate the terms of that order.

Based on the foregoing, the Parties respectfully request that the Court relieve them from its May 24 Order and permit the Parties to continue their good faith efforts towards reaching an agreement that will put the City on a path towards compliance with the CWA and MAWPCL. The Parties have scheduled daily meetings for the remainder of the week and propose that they report to the Court no later than June 21, 2023, on the Parties' progress.


III. Conclusion

The Parties appreciate the Court's time and attention to the important matters involved in this case and the Drinking Water Case. All of the interested parties have been actively engaged in good faith efforts to reach a resolution. However, more time is needed. Therefore, the Parties jointly request that the Court relieve them from the May 24 Order and instead require the Parties to submit a joint status report on or before June 21, 2023, with an update on the Parties' discussions.

Respectfully submitted,

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